

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICHARD L.,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2011040708

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 29, 2011, in Pomona.

Claimant was represented by his adoptive father Richard F. L. (Father).¹ Daniella Martinez, Fair Hearing Manager, represented the San Gabriel/Pomona Regional Center (SGRC or Service Agency).

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on September 29, 2011.

ISSUE

Whether the Service Agency may terminate claimant's services on the grounds that he no longer presents with a qualifying developmental disability under the Lanterman Developmental Disabilities Services Act.

¹ Claimant and his father are identified by first name and last initial, or by title, to protect their privacy.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 16-year-old boy who is eligible to receive regional center services based on his diagnoses of mental retardation and epilepsy.
2. The Service Agency provides claimant with respite services of 26 hours per month, but claimant is not presently utilizing those hours.
3. By letter dated April 6, 2011, the Service Agency notified Father of its determination that claimant no longer presents with a developmental disability that would warrant ongoing eligibility for regional center services under the Lanterman Act. On April 8, 2011, Father filed a fair hearing request, on claimant's behalf, to appeal the Service Agency's decision. Jurisdiction in this matter was thus established.

Claimant's Background

4. Claimant was placed in foster care with Father in 1997. He was reportedly exposed to illegal drugs during pregnancy. Father adopted claimant in 1998. Claimant currently lives with Father.
5. Claimant is receiving, and has received over the years, special education services and supports from his local school district, in the eligibility category of specific learning disability.
6. On September 10, 1998, claimant was diagnosed with mild mental retardation and epilepsy, both of which made him eligible to receive services for the Service Agency.
7. The Service Agency relies on recent reports from claimant's school which indicate that claimant presents with developmental disabilities that no longer qualify him for regional center services. The Service Agency contended that because claimant no longer is substantially disabled due to either of his qualifying diagnoses, his eligibility can be terminated. To the Service Agency's credit, it did acknowledge that claimant's initial diagnoses were appropriate at the time he was originally found eligible for services.
8. The Service Agency contends that claimant's diagnoses have changed over time (for the better) as a result of the interventions and support he has received from his school district, the Service Agency, and Father.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

2. Where a change in the status quo is sought, the party seeking the change has the burden of proving, by a preponderance of the evidence, that a change is necessary. (Evid. Code, §§ 115 and 500.) In this case, the Service Agency is seeking to change the status quo by its decision to terminate claimant's eligibility for services under the Lanterman Act. As such, the Service Agency has the burden to prove by a preponderance of the evidence that this change is necessary.

3. Eligibility for services under the Lanterman Act exists when an individual establishes that he or she suffers from a substantial disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or what is referred to as the "fifth category" (a condition similar to mental retardation or which requires treatment similar to that required by those who are mentally retarded). (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also onset before one's 18th birthday and continue indefinitely thereafter. (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subds. (a), (b)(1), and (b)(3).)

4. Pursuant to Welfare and Institutions Code section 4643.5, subdivision (b), a person who is determined by a regional center to have a developmental disability "shall remain eligible for services from regional centers unless a regional center, following a comprehensive assessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." The Service Agency did not establish that its original determination of eligibility was clearly erroneous. (Factual Findings 1-8.)

5. In this case, the Service Agency presented no evidence and made no contention that its original eligibility determination for claimant was clearly erroneous. As such, grounds for terminating claimant's eligibility were not established. Section 4643.5 makes clear that the only way for the Service Agency to terminate claimant's services is by showing that its original eligibility determination was clearly erroneous. Claimant's progress in his intellectual abilities is not a basis to terminate his eligibility for regional center services, nor is the fact that his epilepsy may no longer be a "substantial disability." These changes in claimant's needs may provide a basis for the Service Agency to review and modify his Individual Performance Plan. Under Welfare and Institutions Code section 4646.5, subdivision (b), a regional center is authorized to review and modify a consumer's IPP "in response to the person's achievement or changing needs." Claimant's appeal must be granted. The Service Agency may not terminate his eligibility for services.

ORDER

Claimant's appeal is granted. The Service Agency may not terminate claimant's eligibility for regional center services.

DATED: October ____, 2011

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.